

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2004-297-S - ORDER NO. 2006-110  
FEBRUARY 15, 2006

IN RE:	Application of Midlands Utility, Inc. for	)	ORDER RULING ON
	Approval of a New Schedule of Rates and	)	PETITION FOR
	Charges for Sewerage Service Provided to its	)	DECLARATORY ORDER
	Customers in Richland, Lexington, Fairfield	)	
	and Orangeburg Counties.	)	

**I. INTRODUCTION**

This matter comes before the Public Service Commission of South Carolina (the Commission) on a Petition for Declaratory Order filed by Midlands Utility, Inc. (Midlands or the Company) requesting that this Commission declare that Midlands is authorized, under its existing schedule of rates approved by this Commission, to begin charging its collection-only rates to those customers whose wastewater is treated by other treatment providers and to pass through to those customers the rate charged by the respective treatment-only providers on a pro rata basis without markup and without further Order of this Commission. The Office of Regulatory Staff (ORS) has filed a Response to the Petition. Midlands has filed a Reply to the Response.

**II. THE PLEADINGS**

In its Petition for Declaratory Order, Midlands states that it currently furnishes sewer collection and sewer treatment service to approximately 2,937 residential and commercial customers in Richland, Lexington, Fairfield and Orangeburg Counties. In

certain areas of its service territories, Midlands provides treatment services for the customers it serves through its own wastewater treatment facilities. In other areas, Midlands provides collection-only service to its customers in that it collects sewerage through its own collection lines and transmits it to a governmental entity or other private sewer provider for treatment. Midlands stated in its Petition that it furnishes both services by the authority of this Commission pursuant to the schedule of rates approved by the Commission in Order No. 2005-168, Docket No. 2004-297-S dated April 6, 2005. In this Docket, Midlands applied for rate increases for, among other services, both customers whose wastewater is treated by Midlands and also for those customers whose wastewater is treated by other entities. Midlands noted that it provided notice of its proposed rate increases to both customer classes in Docket No. 2004-297-S as required by the Commission. Midlands further noted that in our directive dated July 19, 2005, this Commission authorized Midlands to implement the schedule of rates approved in Order No. 2005-168 by October 6, 2005.

Midlands collects sewerage only from its respective territories and transmits it to the Town of Winnsboro for treatment, as well as to the City of Orangeburg Department of Public Utilities (DPU), and to the City of Cayce, respectively. Midlands also collects sewerage from its customers in its Vanarsdale portion of its service territory and transmits it to Carolina Water Service, a private utility, for treatment. As of the date of the Petition, Midlands was charging and collecting from its customers in the Winnsboro portion of its service territory the collection-only rate approved by this Commission for Midlands customers whose wastewater is treated by other treatment providers and

passing through to its customers the rates charged by the Town of Winnsboro on a pro-rata basis without markup for treating the sewerage. Further, as of the date of the Petition, Midlands had been charging its customers in the Orangeburg, Cayce, and Vanarsdale portions of its service territory rates approved by this Commission for customers whose wastewater is treated by Midlands wastewater treatment facilities and has refrained from implementing its collection-only rates approved by the Commission for these customers whose wastewater is treated by other treatment providers. Midlands states that it has absorbed the cost of treatment by these other treatment providers.

Midlands states that it is now desirous of charging its customers the collection-only rate and passing through to its customers the rates charged by the respective treatment-only providers on a pro-rata basis without markup as approved by this Commission. Midlands further states that, in accordance with this Commission's directive of July 19, 2005, Midlands has begun charging its customers whose wastewater is treated by other treatment providers and has begun billing these customers the collection-only rate and passing through to these customers the rates charged by the respective treatment-only providers on a pro rata basis without markup. Midlands states a belief that, because it seeks to begin charging certain of its customers a rate heretofore approved by this Commission in Docket No. 2004-297-S, it does not require further authority or order from this Commission to do so, provided it complies with all other regulations of this Commission, to include required billing practices.

Accordingly, Midlands petitions this Commission for an Order declaring that it is authorized, under its existing schedule of rates approved by this Commission, to begin

charging its collection-only rates to those customers whose wastewater is treated by other treatment providers without further Order of this Commission. Midlands states that it will comply with all regulations of this Commission, to include required billing practices.

The Office of Regulatory Staff filed a Response to Midlands' Petition. ORS states that this Commission approved a collection-only sewer charge for Midlands in Order No. 2002-138, dated March 11, 2002. However, at the time of the issuance of the Order, Midlands did not implement the collection-only sewer charge for any group of customers. At a later date, Midlands filed an application with the Commission in which Midlands sought (1) a modification of a Wholesale Wastewater agreement between Midlands and the Town of Winnsboro and (2) Commission approval to implement the collection-only sewer charge. By Order No. 2002-785 dated November 14, 2002, the Commission approved a modification in the treatment rate charged to Midlands by the Town of Winnsboro for wastewater treatment services. Additionally, the Commission granted permission for Midlands to implement the collection-only sewer (service) charge established in Order No. 2002-138. Prior to the approval to implement the collection-only sewer charge granted by Order No. 2002-785, Midlands had not charged the collection-only sewer charge to any of its customers.

Subsequently, the Response notes that Midlands received an increase in rates and charges in Order No. 2005-168, dated April 6, 2005. The Company received increases in rates for sewer service (collection with treatment provided by Midlands) and for collection-only service (treatment provided by another entity). At the time of the hearing in this rate case, according to ORS, only customers in the Royal Hills Subdivision of

Fairfield County where wastewater treatment is provided by the Town of Winnsboro were served and charged by Midlands under the collection-only rate schedule. ORS states that, in this most recent rate case, the application filed by Midlands did not request immediate implementation of the increased collection-only charges for customers not previously approved for the collection only charge. Further ORS asserts that, because Midlands did not request immediate implementation of the collection-only charges and passthrough of treatment charges, the Notice of Filing did not advise those customers who maybe charged the collection-only rate that they would be subject to the collection-only charges as well as the passthrough of treatment charges. According to ORS, the customers who may be charged the collection-only rate received no notice that approval of Midlands' request for an increase in rates would result in those customers being moved from the rate schedule for sewer service (collection and treatment) to the collection-only rate schedule which includes the accompanying passthrough of treatment charges. ORS asserts that notice to the public is required of any request to implement new rates, charges, or classifications. ORS notes that, while notice of the new rates was provided in the Notice of Filing, the change of certain customers' classification, i.e. being moved from one rate schedule to another, was not provided. According to ORS, fundamental fairness dictates that the customers be notified of their change in rate classification and that they will be charged under the collection-only rate schedule with the additional passthrough of treatment charges. ORS states that without proper notice to the customers that their rate classification, or schedule of rates under which they are being charged has changed, those customers are in effect being charged an increase without notice.

ORS requests that the Commission require Midlands to notify those customers prior to implementing the collection-only rates for customers not being served under the collection-only rate schedule at the time of the hearing. For any and all customers to which Midlands has charged the increased collection-only rates and accompanying passthrough rates prior to notice considered appropriate by ORS, ORS asks that the Commission order Midlands to provide credit or refund of those increased rates.

Midlands filed a Reply the Response of ORS. The Company states that, in spite of the fact that the proceedings before this Commission granting Midlands its collection-only charge and increasing that collection-only charge were preceded by due notice approved by this Commission, ORS argues that Midlands must now further notify its customers in detail beyond its billing notices of the change in rates prior to implementing the rates approved pursuant to South Carolina law. Midlands argues that it has provided its customers the notice required by law, and that ORS did not raise the issue of notice until it received a single complaint from a Midlands' customer who received a billing which properly stated separately the collection only charge and treatment charge.

Midlands concluded that it has properly billed its customers a lawful rate under its tariff, and to now impose upon Midlands any further notice or rate case requirements would unfairly burden it with unrecoverable financial expenses. According to Midlands, this Commission has granted Midlands until October 6, 2005, to implement all new rates established under Order No. 2005-168, and Midlands has endeavored to comply with the directive by implementing the approved rates. Accordingly, Midlands stated that, having

met all noted requirements in Docket No. 2004-297-S, it may now implement all lawful rates provided for by this Commission in Order No. 2005-168.

Oral arguments were held on the issues in these pleadings before this Commission on October 19, 2005.

### **III. DISCUSSION**

We will rule on the Petition and attempt to address the issues raised by the parties. Midlands has petitioned the Commission for a declaratory order that it is authorized, under its existing schedule of rates approved by this Commission, to charge its collection-only rates to those customers whose wastewater is treated by other treatment providers without further Order of this Commission. For the following reasons, we grant the petition of Midlands in part, and we deny the ORS request to order refunds. However, we do hold that Midlands must provide additional information to its customers in this matter, as discussed below.

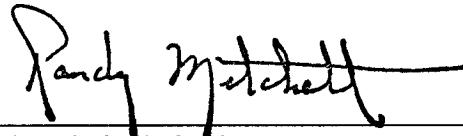
ORS has argued that Midlands provided insufficient explanation as to: 1) the change in rate schedule for those customers, 2) the collection-only rate and the passthrough mechanism, 3) the amount of the collection-only rate as approved by the Commission, and 4) the treatment cost charged by the entity treating the sewerage. While it is a close question, it appears to this Commission that the customers were put on at least inquiry notice that they should investigate the applied-for rate change, after publication and service of the Notice of Filing in the latest rate case. That rate change was approved last year in a proceeding in which ORS participated. The Commission will not at this late date place additional notice requirements on Midlands prior to allowing it

to bill its customers the approved rate. However, we do wish to make it clear that, in the future, the better practice would be to provide notice that meets ORS' concerns prior to switching to a collection-only rate.

**IV. ORDER**

We hold that there is to be no refund for this occurrence, and Midlands may continue to bill their clients at the new rates. However, we further hold that Midlands shall send a further explanation to its affected customers regarding the recent change that addresses the four ORS concerns that were listed previously in the Discussion section of this Order. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



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Randy Mitchell, Chairman

ATTEST:



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G. O'Neal Hamilton, Vice-Chairman

(SEAL)